

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
CRIMINAL JUSTICE ACT PLAN**

**I. AUTHORITY**

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of Title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judicial Policies and Procedures (CJA Guidelines), the Judges of the United States District Court for the Southern District of Indiana, adopt this Plan for furnishing representation in federal court to any person financially unable to obtain adequate representation in accordance with the CJA.

**II. STATEMENT OF POLICY**

**A. Objectives**

1. The objective of this Plan is to attain equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived because they are financially unable to pay for adequate representation, or any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the USA Patriot Act Reauthorization (codified in part at Section 3599 of Title 18, United States Code) (formerly the Anti-Drug Abuse Act of 1988 (codified in part at Section 848(q) of Title 21, United States Code)), and the CJA Guidelines in a way that meets the needs of this district.

**B. Compliance**

1. The court, its clerk, the Community Defender Organization, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney shall be provided by the clerk of court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

**III. DEFINITIONS**

- A. "Representation" includes counsel and investigative, expert and other services.

- B. “Appointed attorney” includes private attorneys, the Executive Director and staff attorneys of the Community Defender Organization.
- C. “Judicial Officer” includes a United States District Judge or a United States Magistrate Judge or a Judge of the United States Court of Appeals for the Seventh Judicial Circuit or a Justice of the United States Supreme Court.
- D. “Community Defender” shall be defined within the scope set forth at Part V of this Plan. Unless otherwise specified, references to the Community Defender are inapplicable to cases initiated in the Evansville and New Albany Divisions.

#### IV. PROVISION OF REPRESENTATION

##### A. Circumstances

- 1. Mandatory. Representation shall be provided for any financially eligible person who:
  - a. is charged with a felony or with a Class A misdemeanor;
  - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in Section 5031 of Title 18, United States Code;
  - c. is charged with a violation of probation, or faces a change of a term of condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - d. is under arrest, with such representation is required by law;
  - e. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
  - f. is subject to a mental condition hearing under Chapter 313 of Title 18, United States Code;
  - g. is in custody as a material witness;
  - h. is seeking to set aside or vacate a death sentence under Sections 2254 or 2255 of Title 28, United States Code, unless a federal resources center for such cases may be established in this jurisdiction;
  - i. is entitled to appointment of counsel under section 4109 of Title 18, United States Code ;
  - j. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
  - k. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a Judicial Officer determines that the interests of justice so require, representation may be provided for any financially eligible person who:
  - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction), for which a sentence to confinement is authorized;
  - b. is seeking relief, other than to set aside or vacate a death sentence under Sections 2241, 2254, or 2255 of Title 28, United States Code;
  - c. is charged with civil or criminal contempt who faces loss of liberty;
  - d. has been called as a witness before a Grand Jury, a court, the Congress, or a federal agency or commission who has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceedings, or face loss of liberty;
  - e. is proposed by the United States Attorney for processing under a pretrial diversion program;
  - f. is held for international extradition under Chapter 209 of Title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a Judicial Officer, when they are formally charged or notified of charges if formal charges are sealed, or when a Judicial Officer otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel

1. Number.
  - a. General Provision. More than one attorney may be appointed in any case determined by the court to be extremely difficult.
  - b. Defendants Charged With Crime Punishable By Death. In every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time either: (i) before judgment, shall be entitled to two counsel, of whom at least one shall be learned in the law applicable to capital

cases; or (ii) after the entry of a judgment imposing a sentence of death but before the execution of that judgment, shall be entitled to the appointment of one or more attorneys and the furnishing of such other services as set forth in this subsection C.

- c. Post Conviction Proceedings Seeking to Vacate or Set Aside Death Sentence. In any post conviction proceeding under section 2254 or 2255 of title 28, United States Code, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services as set forth in this subsection C.

2. Qualifications. If an appointment under C.1.b., above, is made before judgment, at least one attorney so appointed must have been admitted to practice in the court in which the prosecution is to be tried for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court.

If an appointment under C.1.b., is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases.

With respect to this subsection, the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

#### D. Eligibility of Representation

1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a Judicial Officer after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

E. Appointments

1. Indianapolis and Terre Haute Divisions. When a Judicial Officer determines that counsel should be appointed pursuant to this section, the court will ordinarily appoint the Executive Director of the Indiana Federal Community Defender, or upon the recommendation of the Executive Director, a member of the CJA Panel. When circumstances of the case indicate that it would be inappropriate for the Community Defender to be involved in the appointment of counsel, the court may appoint a member of the CJA Panel without consulting the Community Defender, but the Community Defender should be given notice of the appointment. When necessary, the court may appoint a qualified criminal defense lawyer who is not a member of the CJA Panel.
2. Evansville and New Albany Divisions. When a Judicial Officer determines that counsel should be appointed pursuant to this section, a name shall be selected from the list of eligible CJA Panel attorneys.

V. COMMUNITY DEFENDER ORGANIZATION

A. Establishment

1. The Indiana Federal Community Defenders, Inc., previously established in this district pursuant to the provisions of the CJA, is hereby recognized as a community defender organization for the Southern District of Indiana.
2. The Community Defender shall provide general legal representation to persons entitled to services under Paragraph IV hereof in the Indianapolis and Terre Haute Divisions of the Southern District of Indiana.

B. Supervision of Defender Organization

The Board of Directors shall be responsible for the supervision and management of the Community Defender. Accordingly, the Executive Director shall be appointed in all cases assigned to that organization. Subsequent assignment to staff or panel attorneys shall be made at the discretion of the Community Defender.

C. Management of CJA Panel

The Community Defender shall be responsible for the systematic distribution of cases to and for the management of the CJA Panel in the Indianapolis and Terre Haute Divisions. In the New Albany and Evansville Divisions, this responsibility

is designated to full or part-time Magistrate Judges permanently assigned to those divisions, or in their absence, to a District Judge assigned to New Albany or Evansville. Appointments to the CJA Panel shall be made by the District Judges pursuant to the provisions of the Plan for the Composition and Management of the Panel of Private Attorneys Under the Criminal Justice Act, at Appendix 1.

## VI. PRIVATE ATTORNEYS

### A. Establishment of CJA Panel

The existing, previously established panel of attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

### B. Organization

The Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.

### C. Ratio of Appointments

Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. In the Indianapolis and Terre Haute Divisions, the Community Defender shall insure that approximately 25% of the appointments are assigned to members of the CJA Panel and that the appointments are fairly and equitably distributed among members of the CJA Panel.

## VII. DUTIES OF APPOINTED COUNSEL

### A. Standards

The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

### B. Professional Conduct

Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Rules of

Professional Conduct adopted by the Supreme Court of the state of Indiana and other standards for professional conduct adopted by the Court.

C. No Receipt of Other Payment

Appointed counsel may not require, request or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.

D. Continuing Representation

Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

In cases involving a defendant charged with a crime punishable by death or post-conviction proceedings seeking to vacate or set aside death sentence, unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, and applications for writ of certiorari to the Supreme Court of the United States.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Pretrial Services Interview

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial interview without counsel, financially eligible defendants will be furnished appointed counsel prior to being interviewed by a pretrial services officer.

When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release hearing (see 18 U.S.C. § 3154(1)) or a detention hearing held under 18 U.S.C. § 3142(f).

B. Notice of Indictment or Criminal Information

Upon the return or unsealing of an indictment or the filing of a criminal information, the United States Attorney shall immediately mail or otherwise deliver a copy of the document to the defendant and defendant's appointed or

retained counsel. If counsel for the defendant is unknown, for cases assigned to the Indianapolis or Terre Haute Divisions, a copy of the document shall be delivered to the Community Defender.

Upon the filing or unsealing of a petition to revoke or modify probation or supervised release, the Clerk of court shall immediately mail or otherwise deliver a copy of the document to the defendant and defendant's appointed or retained counsel. If counsel for the defendant is unknown and the case is assigned to the Indianapolis or Terre Haute Division, a copy of the document shall be delivered to the Community Defender. If counsel for the defendant is unknown and the case is assigned to the Evansville or New Albany Division, previously appointed or retained counsel shall be contacted to determine if continued representation will occur.

## IX. MISCELLANEOUS

### A. Forms

Standard forms pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

### B. Claims

1. Indianapolis Division. Claims for compensation of private attorneys providing representation in the Indianapolis Division under the CJA shall be submitted on the appropriate CJA form, to the office of the Community Defender. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate Judicial Officer. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

2. Evansville, Terre Haute and New Albany Divisions. Claims for compensation of private attorneys providing representation in the Evansville, Terre Haute and New Albany Divisions under the CJA shall be submitted on the appropriate CJA form, to the office of the clerk in the division where the case was assigned. The clerk shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate Judicial Officer. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.



C. Limitation on Review of Claims.

The Criminal Justice Act provides that the reviewing Judicial Officer shall fix the compensation and reimbursement to be paid to appointed counsel. If the court determines that a claim should be reduced, appointed counsel will be provided (a) prior notice of the proposed reduction with a brief statement of the reason(s) for it, and (b) an opportunity to address the matter. However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.

Nothing contained in this Plan or in the CJA Guidelines should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

D. Supersession.

This Plan supersedes all prior Criminal Justice Act Plans of this Court.

X. EFFECTIVE DATE

This Plan, as amended this \_\_\_\_\_ day of \_\_\_\_\_ 2006, shall take effect when approved by the Judicial Council of the Seventh Circuit.

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LARRY J. McKINNEY, Chief Judge  
United States District Court

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SARAH EVANS BARKER, Judge  
United States District Court

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JOHN DANIEL TINDER, Judge  
United States District Court

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DAVID F. HAMILTON, Judge  
United States District Court

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RICHARD L. YOUNG, Judge  
United States District Court

APPROVED BY THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006.

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by: Collins T. Fitzpatrick, Circuit Executive  
Seventh Circuit

## APPENDIX I

### **PLAN FOR THE COMPOSITION AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT (“CJA”)**

#### **I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS**

##### **A. CRIMINAL JUSTICE ACT PANEL**

1. **Approval.** The Court shall establish a panel of private attorneys (hereinafter referred to as the “CJA Panel”) for each division who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the “Panel Selection Committee,” established pursuant to paragraph B of this Plan. Members of the CJA Panels shall serve three year terms, except in those cases in which an attorney is appointed to fill an unexpired term. A lawyer who provides high quality representation as a member of the CJA Panels shall enjoy a presumption of reappointment. Members of the CJA Panel shall serve at the pleasure of the Court.
2. **Size.** The Court shall fix, periodically, the size of the CJA Panel for each division. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
3. **Eligibility.** Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. Attorneys who serve on the CJA Panel will also be expected to have and maintain acceptable standards of competence, judgment, character and demeanor so as to provide their clients with all the benefits of high quality legal counsel.
4. **Special Appointment.** When a Judicial Officer presiding over the case, or the chief judge, if no Judicial Officer has been assigned to the case, determines that the appointment of an attorney is in the interest of justice, economy or continuity of representation, or there is some compelling circumstances warranting his or her appointment, the attorney may be admitted to the CJA Panel pro hac vice and appointed to represent the CJA defendant.

Consideration for preserving the effectiveness of the CJA Panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in

the district, should possess such qualities as would qualify him or her for admission to the district's CJA Panel in the ordinary course of panel selection.

5. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of the Court. Completed applications for membership on the CJA Panel shall be submitted to the Clerk of the Court who will transmit the applications to the appropriate Chairperson of the Panel Selection Committee.

B. PANEL SELECTION COMMITTEE FOR INDIANAPOLIS, TERRE HAUTE AND EVANSVILLE DIVISIONS

1. Membership. A Panel Selection Committee shall be established by the Court for each division. The Committees shall be appointed by the Chief Judge of the District Court and shall consist of one district judge, one magistrate judge, and one attorney member of the CJA Panel. In the Indianapolis and Terre Haute Divisions, the Executive Director of the Community Defender Organization shall also serve on the Panel Selection Committee. Each Committee shall select its own Chairperson.

2. Duties. Each Panel Selection Committee shall meet at least once a year or upon call of the Chairperson to consider applications for any vacancies on the panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill vacancies.

Each Committee shall be empowered to review the operation and administration of the panel and recommend to the Court any changes deemed necessary or appropriate regarding the appointment process and panel management. The Committee shall, from time to time, inquire as to the continued availability and willingness of each panel member to accept future appointments.

## II. SELECTION AND APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

1. List. The Clerk of the Court and the Community Defender Organization shall maintain a current list of all attorneys included on the Indianapolis and Terre Haute CJA Panels, and the Clerk of the Court shall maintain a current list of all attorneys included on the Evansville and New Albany CJA Panels, with current office addresses and telephone numbers, as well as an updated resume setting out their experience in the field of criminal law. The Clerk or Community Defender Organization shall furnish a copy of this lists to each Judicial Officer. The Clerk or Community Defender Organization shall also maintain a public record of assignments of private counsel, and, when appropriate, supporting statistical data.

B. METHOD OF SELECTION

1. Rotation of Panel. Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel and quality representation for each CJA defendant.

2. Notification of Need.

Indianapolis and Terre Haute Divisions. Upon the determination of a need for the appointment of counsel, the Judicial Officer shall notify the Community Defender Organization of the need for counsel and the nature of the cause. If the Community Defender Organization is unable to accept the appointment, the Executive Director or his designee shall notify a member of the CJA Panel in accordance with paragraph 1 above who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing Judicial Officer.

Evansville and New Albany Divisions. Upon the determination of a need for the appointment of counsel, the assigned Magistrate Judge shall notify a member of the CJA Panel in accordance with paragraph 1 above who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment.

3. Emergency. In the event of an emergency, i.e., weekends, holidays, or other non-working hours, the Judicial Officer may appoint any attorney from the Panel. In all cases where members of the CJA Panel are appointed out of sequence, the appointing Judicial Officer shall notify the Community Defender Organization as to the name of the attorney appointed and the date of the appointment.

### III. COMPENSATION - FILING OF VOUCHERS

A. CLAIM FORMS

1. Indianapolis Division - Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Community Defender. That office shall review the claim form for mathematical and technical accuracy and reasonableness, and for recordation of statistical information and conformity with the Guidelines for the Administration of the Criminal Justice Act. If correct, the Office of the Community Defender shall forward the claim form for the consideration of the appropriate Judicial Officer. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

2. Evansville, Terre Haute and New Albany Divisions - Claims for compensation shall be submitted, on the appropriate CJA form, to the Office of the Clerk in the division where the case was assigned. The Clerk shall review the claim form for mathematical and technical accuracy and reasonableness, and for recordation of statistical information and conformity with the Guidelines for the Administration of the Criminal Justice Act. If correct, the Clerk shall forward the claim form for the consideration of the appropriate Judicial Officer. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.